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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,642	04/15/2004	Valentin Leiro Paz	001058.00017	7680

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EXAMINER	
BASICHAS, ALFRED	
ART UNIT	**PAPER NUMBER**
3749	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/824,642	PAZ, VALENTIN LEIRO	
	Examiner	Art Unit	
	Alfred Basichas	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8,10 and 12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,10 and 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-8, 10, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the language involving the "catch" and the "means for spacing" was not previously disclosed in the original specification. While applicant may have had a device in mind at the time of invention, such was not made clear in the specification as originally filed. The amendments to the claims incorporate language that infers something that was not previously made clear.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8, 10, and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The term "catch", mentioned only once in the specification, is given the numeral 26 in the drawings. The corresponding element is depicted as a rectangle. There is no further explanation or depiction. It is not clear what exactly is being represented. Even after the amendments to the specification and the claims, which have been deemed new matter, it is still not clear what applicant has in mind.

b. The same is true for the means plus function recitation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-3, 5-8, and 12 (as understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (3,834,370) in view of Stephen (3,688,758). Nelson discloses a tray 90 supporting combustible material, a grill 102,103 disposed above and connected by a lifting member 95 including a bar 30,32 slidably received in an outer cylinder 33 including a gear (see at least fig. 2) connected to a lever 36. Nelson further discloses the grill horizontally fitting between a longitudinal support in angular guides disposed substantially perpendicular to the support (see at least figs. 1,16,20). Neslon does not specifically recite refractory bricks placed on the combustion tray. Stephen teaches a barbecue grill including a tray having a plurality of refractory bricks to provide for a more even heat distribution so as to provide for better cooking (see at least col. 6, lines 21-52). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the refractory bricks of Stephen into the

invention disclosed by Nelson, so as to enhance cooking. **As regards the "catch", it is being interpreted as openings in the brick support member, which in this case is shown by both Nelson and Stephen as a grate with openings therein. It should be further noted that the term "spacing means" has not been read to invoke 35 U.S.C. 112 6th paragraph for failure to comply with proper means plus function format.**

9. Claims 1-3, 5-8, and 12 (as understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceravolo (5,099,821) in view of Stephen (3,688,758). Ceravolo discloses a tray 4 supporting combustible material including an ashtray 18,32 and leg members 23,24,33, a grill 3 disposed above and connected by a lifting member 8,9,10,11 including a bar 8 slidably received in an outer cylinder 12. Ceravolo further discloses the grill horizontally fitting between a longitudinal support in angular guides disposed substantially perpendicular to the support (see at least figs. 1,3,11,12,etc.). Ceravolo does not specifically recite refractory bricks placed on the combustion tray. Stephen teaches a barbecue grill including a tray having a plurality of refractory bricks to provide for a more even heat distribution so as to provide for better cooking (see at least col. 6, lines 21-52). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the refractory bricks of Stephen into the invention disclosed by Ceravolo, so as to enhance cooking. **As regards the "catch", it is being interpreted as openings in the brick support member, which in this case is shown by both Nelson and Stephen as a grate with openings therein. It should be further noted that the term "spacing means" has not been read to**

invoke 35 U.S.C. 112 6th paragraph for failure to comply with proper means plus function format.

10. Claim 4 (as understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over Ceravolo (5,099,821) in view of Stephen (3,688,758), which combination teaches substantially all of the claimed limitations. Nevertheless, the combination fails to specifically recite an ashtray with handle and adjustable leg members. Official Notice is given that an ashtray with handle and adjustable leg members are old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for cleaning and height adjustment. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate these elements into the invention disclosed by the above combination, so as to provide for cleaning and height adjustment.

11. Claim 10 (as understood) is rejected under 35 U.S.C. 103(a) as being unpatentable over Ceravolo (5,099,821) in view of Stephen (3,688,758), which combination discloses substantially all of the claimed limitations. Nevertheless, the combination does not specifically recite the claimed arrangement of the refractory members and the spacing thereof. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed arrangement into the invention disclosed by the above combination, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable arrangement involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Swain,* 156 F.2d 239.

Response to Arguments

12. Applicants' arguments with regard to the rejected claims, filed August 17, 2006, have been considered, but are not deemed to be persuasive.

c. As regards applicant's amendment to the specification, and as rejected above, the new language is deemed new matter.

d. As regards the definition of the term "catch" and applicant's exhibit, the term has a great number of definitions. It is still not clear what specifically applicant has in mind. While applicant is free the claim the invention as broadly as possible, the same cannot be said of the specification. Applicant is required to disclose the invention in such a way as to permit one of ordinary skill in the art to make and/or use the invention. Applicant has failed to sufficiently disclose the invention to make that so. Reading the specification and looking at the drawings, it is not clear, even after the amendment, what applicant has in mind as the catch, particularly in light of the arguments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are 571 273 8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

September 26, 2006

Alfred Basichas
Primary Examiner